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IQ DATA INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MONIQUE HESSELBROCK, an Individual; No.: 2:23-cv-02169-FLA (PVCx)

Plaintiff,

vs.

I.Q. DATA SYSTEMS, is a business entity;
EQUIFAX INFORMATION SERVICES,
LLC, is a business entity; and DOES 1-25,
Inclusive,

Defendants.

**DEFENDANT IQ DATA
INTERNATIONAL, INC.'S
MOTION TO STRIKE
PLAINTIFF'S EXPERT
DESIGNATION AND
REPORTS**

DATE: June 7, 2024
TIME: 1:30 p.m.
COURTROOM: 6B

Judge: Hon. Fernando L. Aenlle-
Rocha

Complaint Filed: 3/23/23
FAC Filed: 3/31/23

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1 IQ Data International, Inc. (“IQ Data), hereby submits this Motion to Strike
2 (the “Motion”) requesting that this Court strike Plaintiff Monique Hesselbrock’s
3 (“Plaintiff”) purported expert report authored by Thomas A. Tarter (the “original
4 report”) as well as his supplemental expert report dated April 29, 2024 (the
5 “supplemental report”) (collectively, “the reports”).

6 **I. INTRODUCTION**

7 Plaintiff’s expert, Thomas Tarter, claims to be a banking expert witness and
8 a financial and management consultant. Tarter sates he was hired by Plaintiff to
9 formulate opinions on credit reporting practices, debt collection practices, the
10 FCRA, FDCPA, credit industry standards, and on credit damages caused by IQ
11 Data. Tarter’s expert report is riddled with improper conclusions and opinions,
12 which are disguised as, but also often-times, blatant legal and medical
13 statements. Because Tarter’s report is fundamentally and flawed and unreliable
14 due to these improper opinions and conclusions, which are deeply intertwined
15 throughout his entire analysis and opinions, the report should be excluded.

16 Tarter’s report includes opinions that are not his own—including direct
17 notes from Plaintiff about what to include in the report—and fails to include any
18 disclosures regarding the documents he purportedly relied upon. Indeed, Tarter
19 even concedes these violations with the disclosure of his supplemental report,
20 which outlines various deletions that he would like to make. Both reports should
21 be struck for failure to comply in its entirety pursuant to FRCP 37(c)(1) for
22 failing to comply with FRCP 26(a)(2). Additionally, under the principles set
23 forth in *Daubert* and 702 of the Federal Rules of Evidence, Tarter’s opinions
24 should be excluded.

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 This matter stems from a simple debt collection related to Plaintiff’s unpaid
27 utility bills, totaling \$81.54. After Plaintiff moved out of her apartment on July
28 30, 2021, she failed to pay for her July utility bills. Plaintiff now brings the

1 following action against IQ Data, alleging violations of the Fair Credit Reporting
2 Act (“FCRA”), Federal and California Rosenthal Fair Debt Collection Practices
3 Act (“Rosenthal Act”), and the California Consumer Credit Reporting Agencies
4 Act (“CCCRA”).

5 On April 12, 2024, the date Plaintiff’s expert disclosure was due, Plaintiff
6 disclosed her expert designation which included: (1) a “final” report authored by
7 Thomas A. Tarter; (2) Tarter’s curriculum vitae; (3) Tarter’s case log; and (4) a
8 two-page pdf scan of a document labeled “Data Accuracy.” *See* Declaration of
9 Joel D. Brodfuehrer (“Decl. Brodfuehrer”), ¶¶ 3-6, *Exhibits A-D*. Plaintiff did not
10 produce any additional documents. The report also specifically titled
11 “SUPPLEMENTAL EXPERT REPORT,” and includes two electronic sticky
12 notes on Page 16 of the report, which were authored by Plaintiff herself, not her
13 attorney, on January 17, 2024, almost three months prior to the disclosure. Upon
14 information and belief, Tarter made changes to the first draft of the report based
15 on Plaintiff’s comments.

16 Counsel for IQ Data requested a meet and confer with Plaintiff’s counsel
17 and sent emails identifying the issues it had with Plaintiff’s expert disclosure.
18 *Decl. Brodfuehrer*, ¶ 7. IQ Data also requested copies of all prior versions of
19 Tarter’s report, which were responsive to IQ Data’s Requests for Production.
20 *Decl. Brodfuehrer*, ¶ 9, *exhibit E*. On April 30, 2024, counsel for IQ Data
21 conferred with Plaintiff over the phone. IQ Data requested that Plaintiff
22 withdraw the expert report and suggested the parties proceed without experts.
23 Plaintiff’s counsel did not agree and also denied that there were prior versions of
24 the report, despite the title of the report and the sticky notes that were left on the
25 report that was produced. *Decl. Brodfuehrer*, ¶ 10. Counsel for IQ Data informed
26 Plaintiff that it intended to file a motion to strike the expert report and a motion
27 for summary judgment. *Id.*

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On May 1, 2024, Plaintiff’s counsel produced a supplemental report, a declaration referenced in Tarter’s original report, and a word document which included various internet links that Tarter purportedly relied on. *Decl. Brodfuehrer*, ¶¶ 11-13, *Exhibits F-H*. Along with this supplemental production, Plaintiff’s counsel also stated that no other versions of the report existed and that the report noted as “SUPPLEMENTAL EXPERT REPORT” was labeled in error. *Decl. Brodfuehrer*, ¶ 14, *Exhibit I*. Specifically, Plaintiff’s counsel stated: “Mr. Tarter’s earlier report was his report. The inclusion of the word ‘supplemental’ in the original report was a mistake.” *Id.*

The digital sticky notes on the report support that there were in fact prior versions of the expert report. Upon information and belief, Plaintiff’s counsel lied about there not being prior versions of the report. *See Exhibit A* page 16; *Decl. Brodfuehrer*, ¶ 15. The electronic sticky notes authored by Plaintiff on January 17, 2024 at 9:05 p.m., state: “Please check this last sentence regarding documents provided.” Plaintiff also noted the following: “I did not claim identity theft. I filed a credit reporting and debt collection complaint with the Consumer Financial Protection Bureau (CFPB).” *Exhibit A*, p. 16. It is clear a prior version was sent to Plaintiff for review and comment, yet counsel denies there was ever a prior version of the report.

III. THOMAS A. TARTER’S IMPROPER EXPERT CONCLUSIONS AND STATEMENTS

Tarter’s original report contains legal conclusions and opinions on damages which he is unqualified to render. Tarter lacks the requisite knowledge to jump to the conclusions made in his report. Most of Tarter’s report appears to be allegations copied and pasted from Plaintiff’s own Complaint.

A. Tarter’s Improper Legal Conclusions and Conclusions Made With Lack of Knowledge

- IQ Data’s “materially inaccurate and materially misleading, negative

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PARK PLACE trade line reporting violated the Fair Credit Reporting Act (“FCRA”), and the Fair Debt Collection Act (“FDCA”).” *Exhibit A*, p. 3.

- “By I.Q. DATA’s failing to verify the alleged debt within 30 days after receiving notice of [Plaintiff]’s dispute, thereby violating the Fair Credit Reporting Act(“FCRA”).” *Id.* at 3.
- “IQ Data fail[ed] to verify the alleged debt . . .” *Id.* at 3.
- “IQ Data[] fail[ed] to comply with the Michigan Landlord Tenant Act.” *Id.* at 4.
- The Utilities Ledger “mysteriously appeared only after we had commenced litigation.” *Id.* at 17 (emphasis added).
- “This Report addresses how I.Q. DATA’s false and inaccurate trade line reporting for [Plaintiff] adversely affected her ability to obtain credit” *Id.*
- “Consistent with credit, debt buyer and debt collection industry standards, I.Q. DATA had the duty and the obligation, upon receiving notice from [Plaintiff], to thoroughly investigate and even re-investigate [Plaintiff]’s dispute. I.Q. DATA also had the duty and obligation to take all necessary steps to clean up inaccurate reporting on [Plaintiff]. This would include but not be limited to management and senior personnel stepping-in to get the erroneous reporting corrected.” *Id.* at 19.
- “in my opinion, I.Q. DATA, either knew or should have known, that if it violated industry standards by incorrectly reporting [Plaintiff]’s PARK PLACE trade line, it was highly likely and foreseeable that [Plaintiff] would be harmed (damaged), including but not limited to, by a lower credit score.” *Id.* at 21.
- “I.Q. DATA was not FCRA Compliant.” *Id.* at 24.
- “I.Q. DATA’s conduct can no longer be considered merely negligent. After 90 days have passed, the issues of a callous, reckless disregard for [Plaintiff]’s rights under the FCRA was certainly raised.” *Id.*

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- 1 • “A conclusion I have drawn from the Documents I have reviewed is that
- 2 I.Q. DATA failed to comply with the FCRA and violated industry custom,
- 3 standards, and practices relative to [Plaintiff]’s trade line.” *Id.*
- 4 • “it appears that I.Q. DATA was in violation of credit industry practices,
- 5 regulatory guidelines and standards, as well as the FCRA.” *Id.*
- 6 • “I.Q. DATA’s Investigations Were Not Commercially Reasonable” *Id.* at
- 7 25.
- 8 • “It is the industry standard to complete a Fair Credit Reporting Act
- 9 investigation, or reinvestigation, within 30 days of the consumer’s dispute.
- 10 There is no provision for waiting a year to complete an investigation.” *Id.* at
- 11 26.
- 12 • “This by itself renders IQ's investigation unreasonable.” *Id.* at 27.
- 13 • “By operation of the Michigan Landlord-Tenant Act, the alleged debt was
- 14 extinguished by JRK’s and I.Q. DATA's failure to provide the accounting
- 15 within the required time period, and inquiry into the operation of both
- 16 sections 9 and 10 of the Act should have been a part of any reasonable
- 17 reinvestigation.” *Id.* at 30.
- 18 • “By not correcting [Plaintiff]’s trade line credit reporting for more than a
- 19 year, has led me to conclude that I.Q. Data’s conduct rises to the level of a
- 20 willful violation.” *Id.*
- 21 • “in my opinion, I.Q. DATA, either knew or should have known, that: (i) it
- 22 violated industry standards; and that (ii) it was, with a high degree of
- 23 commercial certainty, foreseeable that [Plaintiff] would be harmed
- 24 (damaged) by I.Q. DATA’s inaccurate credit reporting.” *Id.* at 31.
- 25 • “Consequently, false, materially inaccurate and significantly misleading
- 26 unpaid collection account trade line information is detrimental to any
- 27 affected consumer, as it was in this case to [Plaintiff].” *Id.* at 32.
- 28

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- 1 • “I.Q. DATA materially misrepresented a trade line account as being unpaid
- 2 and in collection.” *Id.* at 34.
- 3 • “Had a responsible human being with independent judgment reviewed the
- 4 available information supplied by [Plaintiff], in my opinion, this entire
- 5 matter could have been resolved rapidly and without the need for
- 6 litigation.” *Id.* at 40.
- 7 • “The credit reporting and debt collection actions of I.Q. DATA have the
- 8 appearance of being willful, knowing and intentionally committed in
- 9 conscious disregard for the rights of [Plaintiff].” *Id.*
- 10 • “Was I.Q. DATA FCRA compliant? No.” *Id.*
- 11 • “Was I.Q. DATA Fair Debt Collection Act compliant? No.” *Id.* at 41.

12 **B. Tarter’s Baseless Damages Conclusions**

- 13 • IQ Data’s actions “resulted in economic and non-economic damages” to
- 14 Plaintiff. *Id.* at 3.
- 15 • “The emotional side of credit loss may be measured in terms of the loss of
- 16 enjoyment of life.” *Id.* at 18.
- 17 • “Economic and financial professionals have long agreed that the quality of
- 18 life is important.” *Id.* at 19.
- 19 • “It is a case of endurance and perseverance, on how challenging and
- 20 frustrating it was for [Plaintiff] to identify I.Q. DATA as the reason why *he*
- 21 was denied credit. And then to have to hire an attorney to help *him*[sic]
- 22 resolve *his*[sic] nightmare with I.Q. DATA.” *Id.* at 23.
- 23 • “[Plaintiff] has asserted damages which included: chilling, anxiety,
- 24 embarrassment, loss of sleep, headaches and the time required to correct
- 25 I.Q. DATA’s inaccurate (negative) reporting directly impacted her quality
- 26 of life.” *Id.* at 31.
- 27 • “The credit damage remedy process also takes a toll on the victims (like
- 28 [Plaintiff]) because of the effect that it has on the quality of their lives, the

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1 loss of the ability of having a normal life for other personal, family and
2 household purposes; and instead, their public and social image is tainted as
3 well as their ability to recover from negative credit events by being denied
4 access to credit. This happened to [Plaintiff] because I.Q. DATA did not
5 accurately report the PARK PLACE Account trade line after her dispute.”
6 *Id.* at 34-35.

- 7 • “Credit-financial stigma is real and it is an ugly bi-product of inaccurate
8 credit information.” *Id.* at 35.
- 9 • “consumers (like [Plaintiff]) who fear the stigma of rejection and
10 embarrassment caused by inaccurate negative trade line reporting.” *Id.* at
11 36.
- 12 • “It is my opinion that [Plaintiff] was damaged in multiple ways, including
13 but not limited to the following categories of damages that, when
14 applicable, are expressed in ranges: Credit - Financial Stigma, Credit Score
15 Impact, Reduced Credit Availability and Reduced Credit Expectancy,
16 Chilling, Out-of-pocket expenses for Correction and Dispute, Loss of
17 Quality of Life and Reputation Slander, Medical, Time and energy for
18 Corrections, Sleeplessness, Mental anguish, frustration and upset, Anxiety
19 and Stress, Sense of helplessness, loss of control, Legal Expenses,
20 Statutory, Punitive” *Id.* at 39.
- 21 • “I have met with hundreds of consumers; and, it has been my direct
22 experience, that persons, like [Plaintiff], often report that they were
23 emotionally damaged by the stress, time and negative information reported
24 in credit reports and debt collection actions. These effects are further
25 compounded by the actions of a party failing to make proper disclosures.”
26 *Id.*
- 27 • “Was [Plaintiff] damaged by I.Q.DATA? Yes, economically and non-
28 economically.” *Id.* at 41.

1 **C. Undisclosed Records**

2 Tarter’s report lists numerous documents that were never produced along
3 with the Report. *Exhibit A*, p. 8-9.

4 **D. Tarter’s Supplemental Report**

5 On May 1, 2024, Plaintiff disclosed a supplemental report. *Decl.*
6 *Brodfehrer*, ¶ 11-12, Exhibit F. The report asks that dozens of statements be
7 struck from the original report. *Id.* Further, Tarter claims that any medical or
8 legal terms used in his report should not be interpreted as medical or legal
9 claims. Plaintiff also produced a word document of internet links for dozens of
10 articles referenced in his original report that were not produced. *Exhibit G.*
11 Actual copies of the articles were never provided to IQ Data. Plaintiff also
12 produced a copy of Plaintiff’s declaration that was referenced in the report but
13 not previously produced. *Exhibit H.*

14 **IV. LEGAL ANALYSIS**

15 **A. Tarter’s Report should be stricken for failure to comply with**
16 **FRCP 26(a)(2).**

17 Under FRCP 26(a)(2)(B), a party must provide a report prepared and
18 signed by the expert witness. The report must contain information including, but
19 not limited to, all opinions, the basis for said opinions, the data and other
20 information considered by the expert in forming his or her opinion, any exhibits
21 to be used as a summary of the opinions, and the qualifications of the witness.
22 FRCP 26(a)(2)(B). If a party fails to comply with Rule 26, “the party is not
23 allowed to use that information or witness to supply evidence on a motion, at a
24 hearing, or at a trial, unless the failure was substantially justified or harmless.”
25 Fed. R. Civ. P. 37(c)(1). Rule 37(c)(1) “gives teeth” to the requirements of Rule
26 26 and is a “self-executing, automatic sanction to provide a strong inducement
27 for disclosure of material.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259
28 F.3d 1101, 1106 (9th Cir. 2001) (internal punctuation omitted) (quoting Fed. R.

1 Civ. P. 37 advisory committee's note (1993)). The district court has wide latitude
2 in issuing discovery sanctions under Rule 37(c)(1). *Yeti*, 259 F.3d at 1106.

3 “In determining whether this sanction should be imposed, the burden is on
4 the party facing the sanction ... to demonstrate that the failure to comply with
5 Rule 26(a) is substantially justified or harmless.” *Torres v. City of Los Angeles*,
6 548 F.3d 1197, 1213 (9th Cir. 2008) (citing *Yeti*, 259 F.3d at 1107 (“Implicit in
7 Rule 37(c)(1) is that the burden is on the party facing sanctions to prove
8 harmlessness.”)). The Court could even choose to strike the expert report without
9 considering substantial justification and harmlessness. *Akamai Techs., Inc. v.*
10 *MediaPointe, Inc.*, No. 222CV06233MCSSHKX, 2024 WL 608015, at *5 (C.D.
11 Cal. Jan. 3, 2024).

12 The Ninth Circuit has articulated several factors for the Court to consider
13 when determining whether a violation of the expert discovery rules was
14 harmless, including: “(1) prejudice or surprise to the party against whom the
15 evidence is offered; (2) the ability of that party to cure the prejudice; (3) the
16 likelihood of disruption of the trial; and (4) bad faith or willfulness”
17 *Lanard Toys, Ltd. v. Novelty, Inc.*, 375 Fed. Appx. 705, 713 (9th Cir. 2010)
18 (citing *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003)).

19 The trial judge must act as the gatekeeper for expert testimony by carefully
20 applying Federal Rule of Evidence 702 to ensure specialized evidence is “not
21 only relevant, but reliable.” *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579,
22 589 & n.7 (1993) (“Daubert I”). The Court's obligation “to scrutinize carefully
23 the reasoning and methodology underlying [expert] affidavits” applies here.
24 *Houle v. Jubilee Fisheries, Inc.*, No. C04-2346JLR, 2006 WL 27204, at *5
25 (W.D. Wash. Jan. 5, 2006) (quoting *Daubert I*, 509 U.S. at 501). An entire report
26 may be struck when improper opinions and conclusions render a purported
27 expert's analysis fundamentally flawed and unreliable under Rule 702 and
28 *Daubert*. See *Syneron Med. Ltd. v. Invasix, Inc.*, No. 816CV00143DOCKES,

2018 WL 4696969, at *7 (C.D. Cal. Aug. 27, 2018), report and recommendation adopted, No. SACV160143DOCKESX, 2018 WL 11351325 (C.D. Cal. Sept. 28, 2018). Significantly, the burden of establishing the admissibility of an expert's testimony lies with the party offering the testimony. *Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996).

Plaintiff's delay in producing the documents Tarter relied upon inhibited IQ Data's ability to provide its own rebuttal expert the necessary information to comply with its expert disclosure deadline. The information in Tarter's reports are harmful, prejudicial, fundamentally flawed, unreliable as a whole, and are not helpful to the jury. Plaintiff did not provide any justification for failing to comply with the disclosure requirement. The report should be stricken on these grounds alone.

B. Tarter's Entire Report Should be Stricken for the Inclusion of Numerous Improper Legal Conclusions and Assumptions Without Factual Proof.

It is well settled that experts cannot make legal conclusions. *See Nationwide v. Kass Info. Sys., Inc.*, 523 F.3d 1051, 1059 (9th Cir. 2008) (when an expert purports to offer a legal opinion on an ultimate issue, such testimony must be excluded because "offering legal conclusion testimony invades the province of the trial judge."); *Elsayed Mukhtar v. Cal. State Univ., Hayward*, 299 F.3d at 1053, 1066 n.10 (9th Cir. 2002) ("an expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law."). Expert conclusions which do not inform the jury about the facts but which "merely function like jury instructions," are impermissible. *Lee v. First Nat'l Ins. Co.*, No. CV0906264MMMCWX, 2010 WL 11549637, at *10 n.80 (C.D. Cal. Dec. 22, 2010) (quoting Charles A. Wright et al., FED. PRAC. & PROC. EVID. § 6265.2 (2d ed.)); *see also Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051 (9th Cir. 2008) (striking report for opining how statutes applied to the

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1 facts of the case and for opining conduct of defendant violated statute). Whether
2 IQ Data violated the FCRA as a matter of law is for the Court to decide on IQ
3 Data’s pending motion for summary judgment. *See Keshish v. Allstate Ins. Co.*,
4 959 F. Supp. 2d 1226, 1240–41 (C.D. Cal. 2013) (when an expert cites no facts
5 supporting their opinion, conclusions such as defendant “fail[ed] to try in good
6 faith to reach an agreed scope of damages” is simply a legal conclusion and does
7 not suffice to raise triable issues of fact); *United States v. Weitzenhoff*, 35 F.3d
8 1275, 1287 (9th Cir. 1993) (“Resolving doubtful questions of law is the distinct
9 and exclusive province of the trial judge.”).

10 Whether IQ Data violated the FCRA is not for Tarter to decide, nor is he
11 qualified to make the conclusions he makes in his report. Yet, Tarter explicitly
12 opines that IQ Data violated the FCRA. *Exhibit A*, pgs. 3, 24, 26, 30, 31, 40.
13 Tarter also opines that IQ Data violated a Michigan statute. *Id.* at 4, 30. Tarter is
14 not a Michigan lawyer and has no knowledge regarding Michigan
15 landlord/tenant laws. Tarter is a banking expert, yet his “opinions” reach far
16 beyond that of a banking expert. Several pages of Tarter’s report include
17 conclusions that were copied and pasted from Plaintiff’s Complaint. *See Report*,
18 at (p. 19, 21, 25, 30, 34, 40).

19 Tarter’s report also opines that IQ Data’s alleged actions affected Plaintiff’s
20 ability to obtain credit and also impacted her credit, all without offering tangible
21 evidence to support these claims. *Exhibit A*, pg. 17. Tarter admits that his
22 opinions are merely speculative and does not provide any data or records
23 regarding what Plaintiff’s credit score was prior to or after the alleged debt
24 reporting.

25 Finally, Tarter even opines that the subject utilities leger “mysteriously
26 appeared after we had commenced litigation.” *Exhibit A*, p. 17 (emphasis added).
27 This is something Plaintiff has alleged in prior motions. Again, Tarter simply
28 copy pasted this from Plaintiff and repackages it as his own opinion. *See*

generally *Daubert I*, 509 U.S. 579; *Spintouch Inc. v. Outform, Inc.*, 2022 WL 17363902, at *5 (C.D. Sept. 28, 2022) (An expert’s opinion “must be excluded if that expert is merely parroting some other person’s opinion rather than formulating his own.”). This kind of testimony lacks “any real expertise” because she “simply adopt[s] the opinions of others,” and is precisely the kind of testimony that courts in this circuit have cautioned against. *See Waymo LLC v. Uber Techs., Inc.*, 2017 WL 5148390, at *5 (N.D. Cal. Nov. 6, 2017); *see also United States v. Gadson*, 763 F.3d 1189, 1212 (9th Cir. 2014) (expert witness may receive unmerited credibility for lay testimony because their testimony is “likely to carry special weight with the jury”).

As the Court should begin to appreciate, the dozens of egregious violations here warrant striking the report as a whole. Striking individual statements will not be enough as the report is completely intertwined with these improper opinions. *See Syneron Med. Ltd. v. Invasix, Inc.*, No. 816CV00143DOCKES, 2018 WL 4696969, at *7.

C. Tarter’s Opinions Concerning Damages are Inadmissible.

Tarter is not qualified to testify concerning Plaintiff’s alleged emotional distress damages so his opinions should be excluded. *See Gunaratna v. Dennis Gross Cosmetology LLC*, 2023 WL 2628620, at *9-11 (C.D. Cal. Mar. 15, 2023) (excluding expert opinion where the plaintiff lacked the “knowledge, skill, experience, training, [and] education” to opine on a certain topic). Tarter claims to be a banking expert witness and a financial and management consultant. *Exhibit B*, p.1. Plaintiff has not provided medical records and specifically testified that she has not undergone medical treatment or psychological/psychiatric treatment related to the alleged debt collection. *Exhibit E*. Yet, astoundingly, Tarter attempts to offer unsupported medical diagnoses disguised as his “opinions.” Tarter opines that Plaintiff suffered non-economic damages (pgs. 3, 41); loss of enjoyment of life (p. 18); loss of quality of life (pgs.

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1 19, 39); frustration and nightmare (p. 23); chilling, anxiety, embarrassment, loss
2 of sleep, headaches (p. 31); loss of normal life, family, household, and image
3 (pgs. 34-35, 39); and financial stigma, rejection, embarrassment, mental anguish,
4 helplessness, loss of control, stress, anxiety, and emotional damages (pgs. 35-36,
5 39). These are more allegations copied and pasted from Plaintiff's own
6 Complaint. Tarter provides no information that he is qualified to testify
7 concerning emotional distress issues. Tarter is not a health care provider and has
8 no medical training. There is no evidence that he is qualified to testify as to these
9 matters. Further, even if he was qualified, Tarter never even alleges that he met
10 with Plaintiff or interviewed her. Even if these opinions were admissible, they
11 are not based upon personal knowledge and should be stricken. These improper
12 opinions will unfairly prejudice IQ Data and will weigh on this Court's judicial
13 resources by having to rule on future pretrial motions if he is permitted to testify

14 **D. Tarter's Supplemental Report and Disclosures Are Still Deficient**

15 Tarter's supplemental report includes a list of portions of his prior report
16 that he would like deleted. Despite him conceded that he was not qualified to
17 make several statements, there are still numerous improper conclusions that
18 remain. The Supplemental Report and production of links to websites does not
19 resolve the deficient expert disclosure. All documents he relied upon were
20 supposed to be produced with the original report. Although Tarter references
21 several articles and financial literatures in his numerous footnotes, Plaintiff and
22 Tarter failed to produce any of these documents for which Tarter purportedly
23 relied until after the deadline had passed. Because Tarter was required to produce
24 "any exhibits that will be used to summarize or support" his opinions, the
25 disclosure is deficient regardless of the supplements because (1) they were
26 untimely; and (2) no exhibits were produced, just web addresses. FRCP 26
27 (a)(2)(B)(iii). On this basis alone, the Court should strike the report and expert
28 disclosure pursuant to FRCP 37.

E. Tarter has been excluded for similar reasons before.

The Court has granted motions to strike the disclosure and report of Thomas Tarter before. *See Schoendorf v. Baker*, No. CV-03-461-RHW, 2005 WL 8158643, at *5 (E.D. Wash. Feb. 17, 2005) (The Court strikes the expert testimony of Thomas Tarter.). In *Snyder v. Bank of Am., N.A.*, the Court excluded Tarter for providing irrelevant opinions, opinions he was not qualified to make, opinions on matters that were for the jury to decide, and opinions on matters that were not based on applicable standards. No. 15-CV-04228-KAW, 2020 WL 6462400, at *2 (N.D. Cal. Nov. 3, 2020). In *Anderson v. Wells Fargo Bank, N.A.*, the Court granted defendant's motion to strike Tarter's expert testimony because "Tarter is not qualified to testify regarding the [plaintiff's] purported medical or psychological damages. No. 3:16-CV-2514-N, 2018 WL 3426269, at *17 (N.D. Tex. July 13, 2018). The Court also struck Tarter's testimony containing legal terminology and conclusions.

V. CONCLUSION

For the reasons set forth above, Tarter should be excluded and Plaintiff's expert disclosure and report should be stricken for violating Federal Rule of Civil Procedure 26. Additionally, Tarter's expected testimony is admissible under Federal Rule of Evidence 702 and would unfairly prejudice IQ Data.

Dated: May 10, 2024

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